

COUNTY OF KAUAI  
Minutes of Meeting  
**OPEN SESSION**

Board/Committee:		Kauaʻi Police Commission		Meeting Date		Friday, May 27, 2016		
Location		Mo`ikeha Building – Meeting Room 2A/B			Start of Meeting: 9:00 a.m.		End of Meeting: 10:41 a.m.	
Present		Chair Charles C.C. Iona; Vice-Chair Mary K. Hertog; Members: Catherine Adams, Savita Agarwal, Gerald (Chip) Bahouth, Kevin Mince, Donald (Moki) Okami Sr.  Also present: Board & Commissions Office Staff: Support Clerk Mercedes Omo; Deputy County Attorney Mahealani Krafft; Mayor’s Executive Assistant Paula Morikami; Police Department: Police Chief Darryl Perry; Executive Chief of Police Michael Contrades; Captain Paul Applegate; Sergeant Clyde Caires; Officers of the Month: Richard Brown, George Laccone, Vernon Scribner, Mark Stuple and Darrin Irimata (assigned to a training exercise and could not attend the meeting)						
Excused								
Absent								
SUBJECT		DISCUSSION				ACTION		
Call To Order		After the meeting was called to order, Chair Iona asked if there was anyone in the audience who wished to testify on any of the items listed on the agenda. There was no testimony.				Chair Iona called the meeting to order at 9:00 a.m. with seven (7) Commissioners present constituting a quorum.		
Approval of Minutes		Chair Iona called for a motion to approve the regular open session meeting minutes of April 22, 2016.				Commissioner Adams moved to approve the meeting minutes as circulated. Commissioner Agarwal seconded the motion. Motion carried 7:0.		
Officers of the month for May		Sergeant Clyde Caires read the recognition for Officers of the Month Richard Brown, George Laccone, Vernon Scribner, Mark Stuple and Darrin Irimata for locating an elderly male visitor who was reported missing. While bicycling, the elderly man became disoriented and lost his way and could not make contact with anyone after he discovered his cellphone had fallen out of his backpack. Utilizing an app to track the location of the man’s cellphone, the officers were able to locate the man in a heavily wooded area. The man sustained minor injuries and was transported to Wilcox Hospital for treatment and then released.  Chief Perry along with Executive Chief Contrades presented the officers with a Certificate of Exemplary Service for their service and dedication in keeping the						

SUBJECT	DISCUSSION	ACTION
	community safe.	
<b>Chief's Monthly Reports</b>	<ol style="list-style-type: none"> <li>1. Administrative and Technical Bureau – Recruitment, Records Section and Training Reports</li> <li>2. Fiscal Report</li> <li>3. Investigative Services Bureau – General Crimes/Major Crimes Section, Special Focus Section and Vice Section</li> <li>4. Office of Professional Standards</li> <li>5. Bench Warrant Tracking</li> <li>6. Patrol Services Bureau Monthly Activity and Traffic Reports</li> <li>7. Community Oriented Policing Traffic and Districting Reports for Līhu‘e, Kawaihau and Waimea</li> <li>8. Chief's Announcements and Pertinent Updates</li> </ol> <p><u>Training Report</u></p> <p>In reference to Training Order 16-16029, Heavy Duty Forklift Operator Training, Commissioner Mince asked what's the purpose of the training, how often does it occur and how many forklifts does the department have.</p> <p>Captain Applegate stated that the department has two (2) forklifts, a small one and a large one, that are used to move evidence, such as vehicles, as well as other large items.</p> <p>Commissioner Mince stated that he noticed in the report six (6) out of the seven (7) people named are the management personnel, asking wouldn't it be better to assign the training to the officers or sergeants since they're the ones who usually are assigned to do these type of tasks. Captain Applegate explained that the training was based on the Administrative and Technical Bureau schedule, most of which are management level personnel because they are the only ones who are authorized to move the evidence.</p>	

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	<p><u>Chief’s Announcements and Pertinent Updates</u></p> <ul style="list-style-type: none"> <li>• Chief Perry thanked the officers and detectives who responded to the scene of the plane crash at the Burns Air Field in Hanapēpē. He also thanked Public Information Officer Sarah Blane for providing on-time information to the media, as well as the Kaua‘i Fire Department and the Emergency Medical Service personnel for their assistance.</li> <li>• From May 23<sup>rd</sup> through June 5<sup>th</sup>, KPD is conducting the National Click It or Ticket Campaign aimed at increasing the use of seat belts among young people in the United States.</li> <li>• The Kaua‘i Police Department assisted with Project Graduation.</li> <li>• The Kaua‘i Police Department will be holding its 3rd community meeting with elderly seniors in Kekaha on May 31, 2016.</li> <li>• In partnership with KONG Radio and the Garden Island Newspaper, Chief Perry will be hosting “Beyond the Beat Radio Show”. The program will touch upon current and past issues.</li> </ul>	
<p><b>Business</b> <b>KPC 2016-06</b></p>	<p><u>Discussion and decision-making on identifying and proposing substantive and non-substantive changes to the Police Commission Rules of Administrative Practice and Procedures.</u></p> <p>A handout of the proposed revisions (On file) was provided to the Commissioners.</p> <p>Vice Chair Hertog stated that based on the input from the Commissioners, both she and Commissioner Mince were able to include the recommendations to the first draft version of the proposed Administrative Rules.</p> <p>In reference to Page 5 <u>Mission Statement</u>, Commissioner Adams stated that the</p>	

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	<p>previous language seemed a bit slighted, so she made a recommendation to change the verbiage to read as follows: “the Chief of Police is in command of an honest and effective police department that serves the people of Kaua‘i.”</p> <p>Chief Perry asked if her concept included the island of Ni‘ihau, and if not, he suggested changing the phrase to “serves the County of Kaua‘i” that way it will include the island of Ni‘ihau. Commissioner Adams agreed.</p> <p>In reference to Page 7, Rule 2-1 <u>General Powers of the Commission</u> and Rule 2-2 <u>Selection of the Chief of Police</u>, Commissioner Mince stated that majority of the language was taken directly from the Charter with the exception of Rule 2-2 where changes had to be made to the language to correct the redundancy.</p> <p>In reference to Page 9, Rule 2-10 <u>Code of Conduct</u> Item (d), Commissioner Mince stated that the original language was difficult to understand and a suggestion was made to delete it; however, after discussing it at length, both he and Vice Chair Hertog agreed that it might be a good idea for this Commission to come up with its own language to clarify the meaning of the original language, noting none of the other three (3) Police Commissions have it in their rules.</p> <p>Vice Chair Hertog stated that the Commission needs to decide today whether or not it wants to have a rule on conduct similar to what KPD has.</p> <p>Chair Iona shared that there was an incident involving the conduct of a Maui Police Commissioner, which prompted the Maui Commission to look into putting language together in their rules on professional conduct.</p> <p>Commissioner Bahouth shared that he was given a copy of the Kaua‘i Police Department Standards of Conduct manual, and in it is a page on conduct of a police officer that he emailed to Vice Chair Hertog.</p> <p>Vice Chair Hertog stated that the information that she got from Commissioner</p>	

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	<p>Bahouth was too detailed, and if possible, she would like to keep the language simple like “a Police Commissioner will not behave in a manner that would bring discredit upon the Police Commission and the Kaua‘i Police Department.”</p> <p>Commissioner Adams questioned whether the Office of Boards and Commissions has rules that if you are going to become a member of a board or commission, you will be held to a higher standard and conduct.</p> <p>Chair Iona stated that this Commission needs to get input from the Office of Boards and Commissions before it goes any further. While you would want something like this in our rules, it is the Office of Boards and Commissions who ultimately makes the recommendation to the Mayor for a person to serve on a commission.</p> <p>However, he believes when it comes to oversight of the Police Department, all Police Commission candidates should be subjected to a background check and scrutinized the same way a potential new police recruit would be when applying for the job.</p> <p>Vice Chair Hertog asked if he’s recommending that the Police Commission seek input from the Office of Boards and Commissions to see if they have something in writing for all boards and commissions members.</p> <p>Chair Iona stated that might be stretching it a bit, but at the very least it should be for this Commission. He shared that when he applied to become a Police Commissioner, he underwent a background check because there were concerns about his involvement in an attempted murder case when he was a police officer on Maui, which he was completely exonerated.</p> <p>He stated that every potential police commissioner needs to be thoroughly scrutinized before they take the oath because once they become a commissioner, it will be very hard to explain to the public that this person has oversight of the Police</p>	

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	<p>Department when there is something wrong with their character. He stated that the vetting process should start off with the Office of Boards and Commissions because once it gets to the confirmation stage, unless someone informs the Council about the circumstances surrounding the nominee, the Council members will never know.</p> <p>Vice Hertog stated that it should go beyond the vetting process of performing a background check on a potential police commissioner. The focus should also be on their daily conduct as well. She stated that before moving forward, this Commission needs to decide (today) whether or not it wants to have a rule on conduct to which Commissioner Bahouth replied that the Commission should.</p> <p>Chief Perry commented that one of the issues the department is facing right now is the perception of double standards. If this board is going to have oversight of the Police Department (limited oversight), then those standards have to be maintained or even exceeded. He cannot expect a new recruit to have information that would disqualify him or her, and yet, approve a police commissioner who has oversight of the Police Department; that's not his job, it's the job of the Office of Boards and Commissions. He added that KPD is striving to set high ethical standards right across the board from a commissioner down to a patrol officer, and if there are any discrepancies in that area, it should be addressed immediately.</p> <p>Vice Chair Hertog stated that it should also include the tenure of a Police Commissioner. She shared that the reason she's on the Police Commission is because she's finishing out a former Commissioner's term who, from what she understands, went to jail.</p> <p>Commissioner Okami stated that he agrees with Vice Chair Hertog that it should go beyond just the vetting process. He stated that if anything should happen, the public is not going say Commissioner Okami private citizen, they're going to say Police Commissioner Okami, which he believes will have a negative outlook on the Police Department, the Police Commission and the County. Commissioner</p>	

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	<p>Agarwal agreed.</p> <p>Commissioner Mince asked what the next step is to which Vice Chair Hertog replied that the next step is to come up with language that is simple and everyone can agree on; something that's short, but accurate, in terms of how we as Police Commissioners should conduct ourselves.</p> <p>In reference to Page 10, Rule 3-1 <u>Specific Powers, Duties and Responsibilities of the Police Commission</u> sub-section (a), Commissioner Mince stated that the word "Aims" was changed to "Goals". Also, per Deputy County Attorney Krafft's advice, the language under subsection (e) <u>Performance of Duty</u> will remain the same. In reference to Page 12, sub-section 1 <u>Charges Defined</u>, the word "charges" shall mean allegations.</p> <p>In reference to Page 13, sub-section 4 <u>Investigation of Charge</u>, Commissioner Mince stated that the word "independent" was added to Investigator. On page 14, sub-section 5 <u>Charges Against the Chief of Police</u>, Commissioner Mince explained that the entire language was taken from the Maui Police Commission rules. He reminded the Commissioners that this is just a place holder and more discussion will be required pending the outcome of the ICA's (Intermediate Court of Appeals) ruling on a Declaratory Action to determine the powers of the Mayor and the powers of the Police Commission .</p> <p>In reference to Page 14, sub-section 6 <u>Findings</u>, Commissioner Mince explained that this new section defines four (4) categories of complaint findings which mirrors the Kaua'i Police Department. He stated that the sub-committee included this section in the rules because it will provide the Commission with an organizational history of complaints.</p> <p>In reference to Page 16, new proposed Rule 4-2, <u>Qualifications for Police Chief</u>, Commissioner Mince explained that the language in the first paragraph came</p>	

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	<p>directly from the Charter. The second paragraph was added to say “in addition to the Charter qualifications and attributes previously identified, candidates must also meet additional qualifications as well”, which prompted questions regarding the Chief’s job description because in addition to the job description which was attached to the Chief’s employment contract, there were two (2) other job descriptions but none of which were deemed as the official County of Kaua‘i job description for the Chief of Police.</p> <p>Commissioner Bahouth asked if the job description that is part of the Chief’s employment contract includes any of the contents in the other two job descriptions to which Commissioner Mince replied yes. Commissioner Bahouth asked between all three (3) job descriptions (if you line them all up) if they pretty much say the same thing across the board. Commissioner Mince replied yes, stating that the job description that is attached to the Chief employment contract and the one that is attached to the Commission’s rules is much more detailed on specific things that the Commission wants.</p> <p>Commissioner Mince stated that according to Ms. Rapozo, because the County only has one official job description, which is for the Planning Director, she would like to work with the Police Commission to develop a job description for the Chief.</p> <p>Vice Chair Hertog added that based on the Chief’s 2010 Job Description, the one that was attached to the Chief’s employment contract, she would say that is the current job description.</p> <p>Commissioner Mince added that Ms. Rapozo also recommends that the Police Commission not include a separate job description in the rules.</p> <p>Commissioner Adams commented that she agrees with Ms. Rapozo because it doesn’t make any sense to attach a separate job description to the Commission’s rules. Commissioner Bahouth agreed.</p>	



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	<p>Commissioner Mince stated that another issue that was found in the rules references HRS 78-1, which requires the candidate to have one year of current residency in Hawai'i, which was deemed unconstitutional by our attorney.</p> <p>Deputy County Attorney Krafft explained that whenever the State tries to infringe upon constitutional rights, the courts judge standard is strict scrutiny. The Hawai'i courts have held that it has not met rational basis standards, which means they couldn't find a rational basis between the durational residency requirements and the fitness of an applicant for that position. In other words, the courts have deemed it unconstitutional.</p> <p>Vice Chair Hertog stated that based on Ms. Krafft's legal advice, there is no residency requirement for the Chief of Police position.</p> <p>Chair Iona stated that because the Chief's job description is pretty standard in terms of what the Commission wants, it wouldn't be fair for the Chief to change his current job description; all the Commission needs to do at this point is work with HR to tighten up the language.</p> <p>Vice Chair Hertog stated that the first thing the Commission needs to do is eliminate the chief's residency requirements and then work on some other minimum requirements the Commission may want to have so when the Chief decides to retire, the Commission may want to discuss having educational requirements and use the 2015 Job Description as a base.</p> <p>Chair Iona stated that if at all possible, he would like the Chief's current Job Description to be grandfathered in. But for the future, because the Chief has an open ended employment contract, it will allow the Commission to make changes in case for some reason a new requirement is needed. Vice Chair Hertog stated that she doesn't want to do anything that would jeopardize anything the Chief has already done in terms of qualifications, but for future chiefs, the Commission may</p>	

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	<p>want to add additional requirements.</p> <p>Commissioner Mince stated, referring back to Page 16, he would like to recommend eliminating the first bullet point that talks about residency requirements and use the next two bullet points, which talks about eligibility and meeting the minimum qualifications.</p> <p>Chair Iona commented that if the Commission wants to include the Department of Human Resources, someone from the sub-committee needs to check with HR first to make sure it's okay with them.</p> <p>Commissioner Bahouth asked in looking at the job description, the job description that the Commission currently has for the Chief wouldn't change dramatically for the next chief coming in to which Commissioner Mince replied no.</p> <p>Commissioner Bahouth stated that the real issue is how to qualify to be a candidate for the Chief's position to which Vice Chair Hertog replied correct.</p> <p>Commissioner Mince asked if there should be educational standards for the Chief of Police position.</p> <p>Commissioner Bahouth asked Chief Perry, in his opinion, what he thought the qualifications should be for his position. Chief Perry stated that a four (4) year college degree should be the minimum and a Master's Degree would be preferable.</p> <p>Vice Chair Hertog stated that once she gets the feedback from rest of the Commissioners on what they think the minimum qualification should be, both she and Commissioner Mince can start working on updating the Chief's job description.</p>	

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	<p>Commissioner Bahouth asked going back to the Chief's job description, the one that is attached to the Chief employment contract, in her estimation, as well Ms. Rapozo's, its well written right? Vice Chair Hertog stated that the recommendations made by this Commission should go back to Ms. Rapozo because she's recognizing the 2007 job description, which they don't agree on because they feel it should be the one in which the Chief was hired under.</p> <p>Commissioner Okami asked if the other counties have job descriptions and educational requirements to which Commissioner Mince replied that none of the other Police Commissions have educational requirements and he doesn't know anything about the job descriptions.</p> <p>Commissioner Mince stated that before the Chair moves on to the next agenda item, he would like to finalize all of the work that has been done so far to which Chair Iona replied sure. Vice Chair Hertog reminded everyone that this is not a race. The rules have been this way for many years and she wants to make sure that everyone has a chance to provide input, which includes KPD.</p> <p>Chair Iona stated for the record that after a lengthy discussion by the Commission, in which the Commissioners reviewed of all the revisions, the Commission accepted all of the changes to the first draft version of the proposed Administrative Rules.</p> <p>Commissioner Mince stated that he would feel more comfortable if Ms. Krafft would agree to the changes to which Ms. Krafft replied that the changes are fine with the exception of Rule 6-1 <u>Charges Defined</u>. She would need more time to review the language. The Commissioners agreed.</p> <p>Chair Iona stated to let the record reflect that the approval of Rule 6-1 will be put on hold until Ms. Krafft reviews the rule, in which time, she will send her comments directly to Commissioner Mince. The Commissioners agreed.</p>	

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	<p>Commissioner Bahouth commented that any changes or additions to the Chief’s 2010 Job Description should require the Chief’s input because circumstances may have changed since 2010. Commissioner Okami noted that he agrees with Commissioner Bahouth that it would make sense to get the Chief’s input since he is the sitting expert on what the job actually entails.</p> <p>Chair Iona asked to enter into the record that as the Commission begins to delve into the language for the Chief’s job description that the Commission seek input from the Chief, in addition to what Commissioners Hertog and Mince and the rest of this body have already put together. He added that he wants to assure everyone that the Commission is not trying to change the entire Board and Commissions system. If the Office of Boards and Commissions wants to jump onboard then fine, but he doesn’t want the train to stop and wants the process to continue. He stated that if the Office of Boards and Commissions decides to use the Police Commission as an example, then fine, but he just does not want anything to distract the Commission from accomplishing the task.</p> <p>Vice Chair Hertog added with the Chair’s approval, both she and Commissioner Mince will continue to work on the last three open items, which includes bringing in the Chief relative to the job description to which Chair Iona replied yes. Commissioner Mince also asked if it’s okay if he and Vice Chair Hertog work with HR to finalize the changes pertaining to the Chief’s job description.</p> <p>Chair Iona stated that he would like to entertain a motion to that effect.</p> <p>Commissioner Agarwal asked relative to the conduct of a Police Commissioner, should the Commission seek input from the Chief as well. Vice Chair Hertog replied he already gave his input. Chair Iona stated that what’s also important is doing background checks on police commission candidates. Chief Perry added that technically, all board and commission members are volunteers and should not be required to undergo a background check, but because the Police Commission has</p>	<p>Commissioner Adams moved to allow Vice Chair Hertog and Commissioner Mince to work in collaboration with Chief Perry and the Department of Human Resources relative to a new and revised job description for the Chief of Police position. Commissioner Agarwal seconded the motion. The motion carried 7:0</p>

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	<p>oversight of the Police Department, in his opinion, they should be subjected to the same level of integrity that all KPD employees do, which includes civilian employees.</p> <p>Commissioner Adams stated that if the Police Department are the ones doing the background check, it could be construed as a conflict of interest, but if someone else does an independent background check, that in itself is a whole other thing.</p> <p>Chief Perry stated that KPD has the capability of obtaining pertinent information on an individual than a normal background check person would have. KPD’s background checks are very intensive compared to other departments within the county. If there is anything in a person’s background that’s questionable, KPD will find it.</p> <p>Commissioner Okami noted that even if KPD does a background check, they don’t make the determination. Vice Chair Hertog added that ultimately the decision on whether or not to conduct background checks is the decision of the Office of Boards and Commissions and not this Commission.</p> <p>Executive Chief Police Contrades stated that KPD has been dealing with the issue for quite some time now in terms of trying to get the administration to understand the importance of doing background checks on Police Commission candidates. He stated that as Commissioner Okami has pointed out, KPD is not the one who makes the decision to put a potential Commissioner through. We’re just here to provide the Mayor with the information so he can make a good decision because part of it is we want to avoid someone coming on the Police Commission that would bring disrepute to the entire organization. Chair Iona noted that the next update by the subcommittee will be at the Commission’s next meeting on June 24, 2016.</p>	

SUBJECT	DISCUSSION	ACTION
	With no further discussion, Chair Iona moved onto the announcements.	
<b>Announcements</b>	Chair Iona announced the next regular monthly meeting will be on Friday, June 24, 2016 at 9:00 a.m. at the Mo‘ikeha Building, Meeting Room 2A.2B. Executive Session to follow.	
<b>Executive Session ES-33</b>	Pursuant to the Hawai‘i Revised Statutes §92-4 and §92-5 (a) (4), the purpose of this Executive Session is for the Commission to consult with its attorney as to the powers, duties, privileges, immunities, and liabilities as they may relate to a Declaratory Action to determine the powers of the Mayor and the powers of the Police Commission. <b>(On-going)</b>	At 10:05 a.m. Vice Chair Hertog cited the Hawai‘i Revised Statutes to take the Commission into Executive Session.
<b>ES KPC 2016-010</b>	Pursuant to Hawai‘i Revised Statutes §92-4, §92-5 (a) (4), §92-9 (a) (1-4) and (b), the purpose of this Executive Session is for the Commission to approve the Executive Session minutes of April 22, 2016, and to consult with its attorney on issues pertaining to the Commission’s powers, duties, privileges, immunities, and/or liabilities as they may relate to this agenda item.	
<b>ES KPC 2016-011</b>	Pursuant to Hawai‘i Revised Statutes §92-4, §92-5 (a) (2) and (4), the purpose of this Executive Session is for the Commission consult with its attorney as to the powers, duties privileges, immunities, and/or liabilities as they may relate to two Quarterly Reports dated April 13, 2016, from Police Chief Darryl Perry regarding, the Department’s disposition of notarized complaints filed by citizens with the Police Commission and the disposition of internal investigations other than Police Commission complaints from January 1, 2016 to March 31, 2016.	
<b>ES KPC 2016-012</b>	<p>Pursuant to the Hawai‘i Revised Statutes §92-4 and §92-5 (a) (2) and (4), the purpose of this Executive Session is to review, discuss and decision-making on the Chief of Police Evaluation Results for any Salary Adjustment effective July 1, 2016 and to consult with its attorney on issues pertaining to the Commission’s powers, duties, privileges, immunities, and/or liabilities as it may relate to this agenda item.</p> <ul style="list-style-type: none"> <li>Attachment – Copy of the Chief’s 2015 Performance Evaluation Results.</li> </ul> <p>Chair Iona called for a motion to enter into Executive Session.</p>	<p>Vice Chair Hertog moved to enter into Executive Session. Commissioner Adams seconded the motion. The motion carried 6:0</p> <p>At 10:07 a.m. the Commission entered into Executive Session.</p>

SUBJECT	DISCUSSION	ACTION
<b>Return to Open Session to ratify the actions taken in Executive Session.</b>	At 10:40 a.m. the Commission reconvened in Open Session. Chair Iona called for a motion to ratify the actions taken in Executive Session.	<p>Commissioner Adams moved to ratify the actions taken in Executive Session. Vice Chair Hertog seconded the motion. The motion carried 6:0</p> <p>ES-33: On-going.</p> <p>ES KPC 2016-010: Motion carried 6:0 to approve the Executive Session meeting minutes of April 22, 2016, as amended.</p> <p>ES KPC 2016-010: Motion carried 6:0 to defer the item to the June meeting. A request was made to have a representative from the Office of Professional Standards present at the next meeting to provide a general overview of the disposition on notarized complaints and KPD’s internal investigation complaints.</p> <p>ES KPC 2016-012: Motion carried 6:0 to implement a pay adjustment for Police Chief Darryl Perry. The adjustment will increase his current annual salary amount to \$127,313 effective July 1, 2016.</p>
<b>Adjournment</b>	With no further business to conduct, Chair Iona called for a motion to adjourn the meeting.	<p>Vice Chair Hertog moved to adjourn the meeting. Commissioner Adams seconded the motion. The Motion carried 6:0.</p> <p>At 10:41 a.m. the meeting adjourned.</p>

Submitted by: \_\_\_\_\_  
Mercedes Omo, Staff Support Clerk

Reviewed and Approved by: \_\_\_\_\_  
Charles C.C. Iona, Chair

- ☒ Approved as circulated on June 24, 2016  
☐ Approved as amended. See minutes of \_\_\_\_\_ meeting.